

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2007

Coram

The Hon'ble Mr. Justice V.DHANAPALAN

W.P.No.13202 of 2007 and M.P.No.1 of 2007

Devi Narayanan Housing Development
Pvt. Ltd., rep. by its
Managing Director N.Nandakumar
2, Link Street, II Floor
IV Man Road
Kottur Gardens, Chennai - 600 085

Petitioner

Vs.

1. The Inspector General of Registration,
Department of Registration,
Government of Tamil Nadu,
Santhome High Road, Chennai - 4.
 2. The District Revenue Officer (Stamps),
District Collector's Office, Chennai - 1.
 3. The Sub Registrar,
Alandur, Chennai - 16.
- Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records connected with the proceedings of the respondents particularly that of the third respondent under Ref.K.N.No.1198/2007/14/07 dated 02.04.2007 and quash the same as illegal, invalid without jurisdiction and against the principles of natural justice.

For Petitioner .. Mr. K. Moorthy

For Respondents .. Mr.L.S.N.Hasan Fizal,
Govt. Advocate

ORDER

This writ petition has been filed challenging the proceedings of the third respondent dated 02.04.2007 seeking to quash the same as illegal, invalid and without jurisdiction and against the principles of natural justice.

2 It is the case of the petitioner that a company by name M/s.Telematics Systems Limited was ordered to be wound up by this Court in C.P.No.239 of 1997 vide order dated 18.07.2001. Pursuant to the same, the Official Liquidator took possession of the entire movable and immovable assets of the company. The petitioner company has offered Rs.13,55,00,000/-. The petitioner was accepted as a highest bidder and this Court by order dated 03.11.2006 in Application No.834 of 2006 permitted the Official Liquidator to sell the entire property. Pursuant to the same, the petitioner company also remitted the entire sale consideration of Rs.13.55 crores in two instalments. Thereafter, the petitioner presented the document for registration.

3 The further case of the petitioner is that the value fixed by this Court in Court auction has to be taken into consideration and the respondent has to register the document and act on it. On the contrary, the third respondent, vide order dated 02.04.2007, proceeded to refer the matter under Section 47A of the Stamp Act stating that the amount fixed in the document of Official Liquidator and the prevailing market value in and around the places of the property in question are varying from Rs.1,000/- to Rs.1,200/- and the guideline value of Rs.15,24,60,000/- has to be taken into account and the same has been challenged by the petitioner in this writ petition.

4 The respondent has filed counter and it is contended that the date of execution of Document No.1198 of 2007 is 28.03.2007 and as per sub-section (6) of Section 2 read with the explanation to Section 47(A) of the Indian Stamp Act, the stamp duty has to be collected based on the market value as per guidelines on the date of the execution of the document; the value fixed by the Guideline Value Fixation Committee on 01.04.2003 for Mount Poondamallee Road was Rs.549/- per square foot and the value has been revised by the same Committee on 15.12.2004 for the same property vide Chennai Zone's Deputy Inspector General of Registration in his order No.9359/v/2004 dated 04.12.2004 based on the order of the Inspector General of Registration and G.O. Ms.No.249/95 dated 17.07.1996 as Rs.1,000/- per sq. ft. from 15.12.2004; further higher value document at Rs.1,200/- per sq. ft. was also registered in document no.3456 of 2006 on 06.10.2006 and therefore, the value fixed by the petitioner for his document is very low and it is against the guidelines.

5 Heard Mr.K.Moorthy, learned counsel for the petitioner and Mr.Hasan Fizal, learned Government Advocate for the respondents.

6 The learned counsel for the petitioner assailed the order of the third respondent on the ground that if the property is purchased in Court auction sale, the value fixed by the Court has to be taken into account and there cannot be any differing value prevailing in the surrounding areas to be taken into note. Learned counsel for the petitioner relied on an unreported decision of this Court in W.P.No.24520 of 2004 dated 28.09.2004 and the relevant paragraph reads as follows:

"Only after accepting the highest offer, this Court has issued directions to the Official Liquidator to execute the sale deed. Accordingly, a sale deed was executed by the Official Liquidator in respect of the land and building, in consideration of Rs.3.00 crores on 07.04.2004. Under such circumstances, there cannot be insistence by the department stating that the stamp duty has got to be paid either for the guideline value or for the higher value, since the machinery forms part of the building. A reading of the sale deed in question would clearly indicate that the assets namely land and building were sold by the Official Liquidator under the sale deed only in consideration of Rs.3.00 crores and hence, the contention of the department has got to be negatived. This Court is unable to notice any reason to hold that the document is undervalued, in view of the fact that it was a sale conducted by the Official Liquidator, pursuant to the orders of this Court, that too in a public auction. Under the circumstances, this Court is of the view that the contentions put forth by the respondents' side to sustain the order under challenge cannot be countenanced, and thus, the order of the first respondent has got to be quashed. Accordingly, it is quashed."

7 He has placed further reliance on yet another unreported decision in C.A.No.2478 of 2000 in Company Petition No.130 of 1999 in the case of I.L. Raghunath and 11 others vs. Anubhav Plantations Limited dated 24.08.2001 and the relevant portion reads as under:

"3. The purchaser has addressed a letter to the Administrator stating that the Sub Registrar, Alandur directed her to pay stamp duty for a higher amount arrived on the basis of present guideline value. It has been held by this Court as well as the Supreme Court that the guideline values fixed by the Government are only administrative instructions. I am of the view that when an auction sale is conducted in pursuance of the directions of the Court inviting offers and in the open Court the offer is considered and accepted by the Court, the amount offered and accepted by the Court would represent the real market value of the property. Therefore, the Sub Registrar, Alandur is directed not to insist on the purchaser to pay a stamp duty arrived at on the basis of present guideline value and he is directed to accept the stamp duty on the sale price of Rs.2,25,000/- which was accepted by the Court and register the document executed in favour of the purchaser, C.Vijayalakshmi in respect of the unfinished flat at "Abilash", No.T-17, Block No.25, No.75, Lakshmi

Nagar IV Stage, Nanganallur, Chennai.

4. The Inspector General of Registration is also directed to issue suitable directions for future guidance and compliance to all the Registrars and the Sub Registrars of the Registration Department to the effect that in the case of auction sale of the properties belonging to the company in liquidation and where the offer is accepted by the Court in an open auction sale, the price accepted by the Court shall be taken up the value of the property in question for the purpose of determining the stamp duty to be paid by the purchaser, and not the value arrived at on the basis of the guideline value as there is no possibility of evasion of stamp duty in Court sales."

8 In support of his contention, reliance has also been placed by the learned counsel for the petitioner on:

a. a judgment of the Calcutta High Court reported in Nitya Hari Kundu Vs. State of W.B. (AIR 2001 Calcutta 76) and the relevant portion reads as under:

"Therefore, in interpreting the statutes if I make harmonious construction of Section 47A read with the Rules made thereunder, it will be read that valuation made by the Court cannot be said to be done not truly set forth and there is any reason to disbelieve otherwise. If any authority does so it will tantamount to exceeding the jurisdiction made under the law. The authority concerned cannot sit on appeal over a Court decision unless appeal is preferred from such order which is absent herein."

b. a judgment of this Court reported in AIR 1997 Madras 296 in the matter of S.P. Padmavathi vs. State of Tamil Nadu and others (para 12)

"We accordingly, answer Point No.1 as follows:

"Power under Section 47-A of the Act can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance, has not been truly set forth, with a view to fraudulently evade payment of proper stamp duty. Mere lapse of time between the date of agreement and the execution of the document will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to invoke the power under Section 47-A of the Act, unless there is

lack of bona fides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty..."

c. yet another judgment of this Court reported in 1998 (III) CTC 366 in the matter of M. Krishnan and 44 others vs. The District Collector, Erode District, Erode and two others: (paras 41, 42, 44 and 45)

"It is essential to point out that before registration, the Registering Authority has to record that he has reasons to believe that the value of the property has not been duly set forth in the instrument. Only after recording such reasons, the Registering Authority has to complete registration of the instrument in question and thereafter alone, he could refer the same to the Collector.

To this extent, the functions of the Registering Authority is quasi judicial in nature and he has to come to a conclusion that the market value of the property dealt under the document had not been truly set forth and after completion of registration, he could make a reference. At least some reasons should be recorded and immediately after completion of registration or sooner thereafter, a reference has to be made under sub-section (1) of Section 47-A of the said Act.

It is further pointed out that admittedly, the Registering Authority had applied his mind and had accepted the market value and as such, he has not entertained any doubt nor he has any reason to believe that the market value of the property has not been truly set forth in the instruments before completing registration. In fact, the Registering Authority had completed the registration, assigned document numbers and kept ready for release of the original instruments to the petitioners.

Thereafter, for reasons best known to him, the documents have not been released to the petitioners. It is contended by the learned counsel for the petitioners that the Registering Authority having not entertained any doubt as to the market value of the property, and having completed registration, cannot now retain the documents or instruments."

d. a judgment of the High Court of Andhra Pradesh reported in MANU/AP/0576/1998 in the matter of M. Venkata Ramana vs. Collector and District Register, Hyderabad District and another (paras 4 & 7)

"The reasoning given above is also further fortified by the judgment of this Court being K. Sivaramaiah vs. Special Deputy Collector, Urban, Cuddapah, 1989 (1) ALT 546. The facts of that case were almost similar to the present case where the land had been sold in public auction and the High Court found "the object underlying Section 47 of the Indian Stamp Act is to neutralise the effect of undervaluation of the immovable property conveyed under registered instruments of sale, or exchange, or gift or partition or settlement. In the instant case, there could be no question of undervaluation of the property as the property was sold in public auction in favour of the appellant. The expression used as "truly" and not "properly" or "correctly". The consideration, the appellant parted with for purchase of the property, it is not denied, was truly set forth in the instrument. It therefore follows that the reference made by the Sub-Registrar, Pullampet is bad."

e. a judgment of this Court reported in 2003-1-L.W. 562 in the matter of S. Jayalakshmi vs. The Government of Tamil Nadu represented by Special Secretary to Government, Commercial Taxes (J1 Department) Secretariat, Chennai - 9 and others (paras 10 & 11)

10.2 This Court, in The Collector of Nilgiris vs. M/s. Mahavir Plantations Pvt. Ltd., reported in AIR 1982 Mad. 138=(1981) 94 LW 685, held as under:

. . . The guidelines were not intended as a substitute for market value or to foreclose the inquiry by the Collector which he is under a duty to make under Sec.47-A. The valuation guidelines were not prepared on the basis of any open hearing of the parties concerned or of any documents. They were based on data gathered broadly with reference to classification of lands, grouping of lands and the like. This being so, the Collector acting under Sec.47-A cannot regard the valuation guidelines as the last word on the subject of market value. To do so would be to surrender his statutory obligation to determine market value on the basis of evidence, which is a judicial or a quasi

judicial function which he has to perform."

10.3 Similarly, it is held in Sagar Cements Ltd. vs. State of A.P. Reported in 1989 (3) Andhra Law Times 677 that the Government has unilaterally fixed the value of the lands in the Basic Valuation Register and the same had no statutory foundation and therefore it does not bind the parties.

10.4 The view with regard to the statutory force of basic value in the Basic Valuation Register has no statutory foundation and therefore, it does not bind the parties of the conveyance, has been confirmed by the Apex Court in Jawajee Nagnatham v. Revenue Divisional Officer reported in 1994 (4) SCC 595=1994-2 LW 14.

11 In the instant case, as the respondents failed to place any material before this Court to distrust that the market value of the property conveyed under the respective sale deeds of the petitioners has not been truly set forth in the respective sale deeds, nor given any reason to believe that the petitioners have fraudulently evaded the stamp duty, I am obliged to hold that the market value of the flats set forth in the sale deeds executed by the Corporation in favour of the respective petitioners are truly set forth and as a result, respondents have no jurisdiction to initiate any action under Section 47-A(1) of the Act, either to refer the matter to the Collector to hold an enquiry in this regard or to withhold the respective sale deeds of the petitioners any further."

9 Per contra, the learned Government Advocate has contended that the value determined by the authority is the prevailing market value and therefore, the order passed by the third respondent is in conformity with the Act and the rules contemplated and therefore, there is no reason to interfere with the impugned order.

10 On a reading of the explanation to Section 47A(1), it is clear that for the purpose of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or fetch if sold in the open market on the date of execution of the instrument of conveyance, (exchange, gift, release of benami right or settlement). In the instant case, as discussed earlier, the value of the property has been fixed in the court auction sale and therefore, the amount fixed by this Court for the property is the value to be taken to determine the market value and this is in accordance with the explanation to Section 47A(1) of the Act.

11 A perusal of the document filed in support of the petition and a careful reading of the rulings of this Court and other High Courts make it clear that the value fixed by the Court has to be taken into account for registration and not otherwise. On the contrary, the respondent has proceeded further and fixed the value contrary to the value fixed by the Court while the property has been purchased in the Court auction.

12 A harmonious construction and interpretation of the provision of Section 47-A and also the rules has made it clear that the value fixed by the Court cannot be deviated. When a property is purchased in a court auction, the value fixed thereon should be the value truly fixed based on material consideration. If any value other than the value fixed by the court is taken into consideration, then, it tantamounts to exceeding the jurisdiction made under the law. The authorities concerned cannot sit on appeal over the court's decision unless an appeal is preferred from such an order. Therefore, the value of the property in question for the purpose of determining the stamp duty to be paid by the purchaser is the value fixed in the court auction purchase which is arrived at after an offer and acceptance and the amount offered during the auction and accepted by the Court would represent the real market value of the property. In the instant case, the authority concerned has exceeded his jurisdiction by going beyond the value fixed by the Court. In the absence of any other principle contrary to the above settled proposition of law, I am obliged to follow the proposition laid down by this Court in the case referred to above.

13 Admittedly, the property for registration was purchased by the petitioner in a public auction conducted in the open court and the petitioner company was declared as the highest bidder and the offer made by the petitioner was Rs.13.55 crores for the property including land, buildings and superstructure and the offer was accepted and the petitioner too purchased the same and remitted the sale consideration of Rs.13.55 crores in two instalments. Since the amount fixed by the court is to be taken as the real value of the property, the petitioner presented the document for registration indicating the value of the document as Rs.13.55 crores. However, in the impugned order, the respondent has fixed the guideline value as Rs.15,24,60,000/- contrary to the settled principle that the property purchased in court auction is the value determined by the court and no authority can fix any other value taking note of the surrounding circumstances. In the instant case, the value indicated by the petitioner is the value fixed by the court and therefore, the same has to be taken into account and accordingly, the petitioner has to pay the stamp duty only on the basis of the value fixed by the court in the court auction.

14 Therefore, in view of this settled proposition that the value fixed by the Court has to be taken by the respondent, the impugned order, which is made contrary to the above said proposition cannot be sustained and the same is liable to be set aside. The reasons set out in the impugned proceedings, taking note of the market value on the surrounding areas, are not the basis to decide the guideline value of the property for registration when the Court has fixed the true value of the property. Therefore, looked at from any angle, the impugned order cannot be said to be an order in accordance with law and the same has to be set aside. Accordingly, the impugned order is set aside and the writ petition stands allowed. No costs. Consequently, connected M.P. is closed.

mmi

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Inspector General of Registration,
Department of Registration,
Government of Tamil Nadu,
Santhome High Road, Chennai - 4.
2. The District Revenue Officer (Stamps),
District Collector's Office, Chennai - 1.
3. The Sub Registrar,
Alandur, Chennai - 16.

+2 ccs to Mr.K.Moorthy, Advocate Sr.Nos.36590 & 39038.

+1 cc to The Government pleader Sr.No.36428.

KA(CO)
dcp/22.8

W.P.No.13202 of 2007

WEB COPY